

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

FRANCIS PRESSNALL
Claimant

VS.

RUBBERMAID SPECIALTY PRODUCTS
Respondent,
Self-Insured

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Docket No. 244,156

ORDER

Claimant appealed the September 1, 1999 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

This is a claim for a series of repetitive accidents and mini-traumas to both hands and wrists. The application for hearing initially filed with the Division of Workers Compensation shows an alleged date of accident of January 17, 1999. But at the preliminary hearing claimant amended the date of accident to her last day of work for the respondent on either December 8 or 10, 1998. After finding that claimant failed to provide the respondent with timely notice of the accidental injury, the Judge denied claimant's request for benefits.

The claimant contends the Judge erred and argues that she provided timely notice of the accidental injury. Although she alleged at the preliminary hearing that she sustained a repetitive use injury to her hands, in her brief to the Appeals Board claimant states that she "notified her supervisor of the accident immediately after the *incident* occurred."

The only issue before the Board on this appeal is whether claimant provided the respondent with timely notice of the accidental injury.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. For approximately eight years, Francis Pressnall worked for Rubbermaid Specialty Products as an injection blow mold machine operator.

2. In the early 1990s, Ms. Pressnall injured her right arm while working for Rubbermaid and received elbow surgery. The claim for that injury was settled in 1993. In 1995, Ms. Pressnall reinjured her right hand and arm and sought additional medical treatment. She testified that she then had symptoms in her right hand through her last day of work, along with symptoms in her left hand, which began “[p]robably a couple years ago.” Ms. Pressnall believes she injured her left hand and arm by overcompensating for the right hand.

3. Ms. Pressnall continued to work for Rubbermaid until she was terminated. Rubbermaid allegedly could not accommodate her permanent work restrictions from a 1998 knee injury, which is the subject of another claim.

4. The Appeals Board agrees with the Judge that Ms. Pressnall failed to prove that she provided Rubbermaid with timely notice of the alleged repetitive use injury to the hands and arms. The Judge had the unique opportunity to observe the various witnesses testify and found Ms. Pressnall’s testimony regarding notice to be unpersuasive. The Appeals Board likewise finds Ms. Pressnall’s testimony unpersuasive when considering the testimony of the various witnesses who testified against her.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.
2. The Workers Compensation Act requires a worker to provide the employer timely notice of a work-related accident or injury. The Act reads:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer’s duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer’s duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable

to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.¹

3. Ms. Pressnall has failed to prove when she first notified Rubbermaid of her alleged bilateral hand and arm injuries. Because Ms. Pressnall has failed to prove that she provided Rubbermaid with timely notice of those injuries, the request for benefits must be denied.

WHEREFORE, the Appeals Board affirms the September 1, 1999 preliminary hearing Order entered by Judge Clark.

IT IS SO ORDERED.

Dated this ____ day of October 1999.

BOARD MEMBER

c: Thomas T. Inkelaar, Wichita, KS
Frederick L. Haag, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 44-520.